

UNCLASSIFIED
UNCLASSIFIED

R5
RELEASED IN FULL

William S Van Allen 04/15/2002 11:04:49 AM From DB/Inbox: William S Van Allen

Cable Text:
UNCLASSIFIED
TELEGRAM

April 10, 2002

To: SECSTATE WASHDC - ROUTINE
Action: WHA
From: AMEMBASSY CARACAS (CARACAS 958 - ROUTINE)
TAGS: ECON, PGOV, VE
Captions: None
Subject: FAST TRACK LAWS: BIDDING LAW
Ref: (1) CARACAS 03388, (2) CARACAS 00558, (3) CARACAS 00560, (4) CARACAS 00562 (5) CARACAS 00564

1. SUMMARY. This is another in our series on some of the more controversial of the Chavez Government's 49 decree-laws (decreto-ley). The decree-law amending the existing Bidding Law seeks to simplify and modernize bidding procedures. It expands the law's application to PDVSA, States and municipalities, and into the private sector. It gives the President the discretion to implement contracting measures designed to benefit Venezuelan businesses but limits the measures to small and medium sized enterprises. The amendment represents a centralization of power and an attempt by the Chavez Administration to exert a measure of control over a significant segment of the private sector.
END SUMMARY.

AMENDMENT TO EXISTING BIDDING LAW

2. This decree-law, published in the Official Gazette on 13 November 2001, is a partial amendment to the existing Bidding Law. It concerns contractor selection procedures for the execution of works, acquisition of personal property and the rendering of certain services. Very similar to prior amendments, it retains the National Registry of Contractors and the prior divisions in bidding procedures - General Bids, Selective Bids and Direct Adjudication (the requirements differ in relation to the amount of the contract or the technical, legal or financial standards the contractors must meet). The Preamble states that the amendment's purpose is to simplify bidding procedures.

3. The amendment potentially creates a legal/regulatory vacuum (something seen in other decree-laws, such as the Public Registries and Notarials Law) by removing oversight from the existing organization but providing no immediate replacement. It avoids uncertainty regarding pending bids by expressly providing that the prior law will continue to govern those bids.

FAVORING SMALL AND MEDIUM BUSINESSES OVER LARGE

4. The prior Bidding Law encouraged foreign companies to support Venezuelan businesses by favoring contractors with "Venezuelan participation" (e.g., workers or capital). The new law also incorporates such provisions by permitting the President, acting in concert with the Council of Ministers, to enact contracting provisions that promote and develop Venezuelan companies (provisions related to, e.g., workers, capital or technology transfers), but limits such measures to small and medium businesses.

UNCLASSIFIED

1

UNCLASSIFIED

(22)

UNCLASSIFIED

UNCLASSIFIED

EXPANDING THE LAW'S APPLICATION

5. This decree-law differs from earlier legislation in two important respects. First, it expands the law's application significantly beyond the federal government. The procedures now apply to (private or public) entities that receive subsidies or donations from the public or private sectors. It also covers States and municipalities, apparently superceding their contracting regulations, and contracts receiving financing from multilateral organizations. The specific article provides no examples or clear definition of affected parties.

6. The Preamble, however, does provide some insight. The Preamble alleges that when public or private organs issue subsidies or make donations, they diminish funds available to the State (e.g., by receiving a tax break for the contribution). If the organization receiving the subsidy or donation does not spend the money to further the "social good", the State does not benefit from permitting the contribution. By incorporating entities receiving such contributions into the bidding procedures, the Chavez Administration can exact a measure of control over how the money is spent (e.g., by directing it to small and medium businesses).

7. Conceivably, the Chavez Administration could exert control over a large segment of the private sector. As the amendment characterizes the price of gasoline in Venezuela as a subsidy - i.e., the government gives up the opportunity

to sell gas at international prices - there are few private companies, which would be exempt from the regulations. Such entities might incur considerable expenses in altering business practices to comply with the requirements. The regulations do, however, contain minimum contract amounts and technical requirements that would limit the law's application.

ELIMINATES PDVSA'S BIDDING PROCEDURES

8. In a second important difference from prior legislation, the new law will now apply to PDVSA. Under the prior law, PDVSA had its own selective bidding procedures. It drew from its own register of contractors and did not need to solicit bids publicly. The amendment leaves intact PDVSA's register of contractors, but it effectively repeals the bidding regulations and subjects PDVSA to the general, selective or direct adjudication procedures.

9. Given the significant dollar amounts typically involved in PDVSA contracts, most of its bids will involve the general procedures, which require publicly soliciting and examining bids from any interested and qualified party. As all submissions must be reviewed, this procedure would generally be slower than PDVSA's prior selective bidding process. In addition, PDVSA will have to entertain bids from companies that comply with the requirements of the National Registry, not the more specific requirements of its own registry (which contains mostly larger, high-tech, international companies). It must now accept the lowest bidder that complies with those requirements, regardless of whether the contractor uses older equipment or technology. (NOTE. PDVSA is lobbying for a change in the law. END NOTE.)

10. COMMENT. While certain provisions may be vague, this amendment has a clear agenda, seeking to control bidding practices of an as yet unidentified segment of Venezuelan society (and beyond, by the apparent attempt to supercede the contracting regulations of international organizations acting in Venezuela). The law appears to respond to some elements of the business sector - such as the Petroleum

UNCLASSIFIED

UNCLASSIFIED

UNCLASSIFIED
UNCLASSIFIED

Council - that have wanted a larger share of the government and PDVSA contracting, but ironically has attracted criticism from the private sector for further concentrating the GOV's influence in the economy. Since the law's passage President Chavez has announced the GOV plans to help smaller firms bid for contracts, but he has also said that such bids could not be more expensive than their competitor's. All in all, it appears to be policy still in formation. END COMMENT.

Shapiro

Additional Addressees:
None

CC:
AMEMBASSY BOGOTA
AMEMBASSY QUITO
AMEMBASSY LA PAZ
AMEMBASSY LIMA
AMEMBASSY BRASILIA
AMEMBASSY MEXICO
AMEMBASSY PORT OF SPAIN

Distribution:

TED0980
ACTION WHA-00

INFO	LOG-00	NP-00	AID-00	CEA-01	CIAE-00	COME-00	CTME-00
	DODE-00	DOEE-00	ITCE-00	DOIE-00	SRPP-00	DS-00	EAP-00
	EB-00	EXME-00	E-00	FAAE-00	UTED-00	VC-00	FRB-00
	H-01	TEDE-00	INR-00	ITC-01	L-00	VCE-00	AC-01
	NSAE-00	NSCE-00	OMB-01	OPIC-01	PA-00	PM-00	PRS-00
	ACE-00	P-00	SP-00	SSO-00	STR-00	TEST-00	TRSE-00
	USIE-00	PMB-00	DSCC-00	DRL-02	G-00	NFAT-00	SAS-00
	{(AS-00	INSE-00	IO-00) /008W			

-----820E5D 101728Z /38

R 101647Z APR 02
FM AMEMBASSY CARACAS
TO SECSTATE WASHDC 5418
INFO AMEMBASSY BOGOTA
AMEMBASSY QUITO
AMEMBASSY LA PAZ
AMEMBASSY LIMA
AMEMBASSY BRASILIA
AMEMBASSY MEXICO
AMEMBASSY PORT OF SPAIN

UNCLAS CARACAS 000958

E.O. 12958: N/A
TAGS: ECON, VE, PGOV
SUBJECT: FAST TRACK LAWS: BIDDING LAW

REF: (1) CARACAS 03388, (2) CARACAS 00558, (3) CARACAS
00560, (4) CARACAS 00562 (5) CARACAS 00564

End Cable Text

William S Van Allen 04/15/2002 11:04:49 AM From DB/inbox: William S Van Allen

UNCLASSIFIED

3

UNCLASSIFIED